



The Comptroller General
of the United States

Washington, D.C. 20548

Burkard - Ph

Decision

Matter of: Clemco Industries
File: B-228254
Date: September 30, 1987

DIGEST

Where a bid is submitted in the name of a parent corporation and is accompanied by a bid bond in the name of its subsidiary corporation, the bond is materially deficient and the bid must be rejected as nonresponsive, because the surety would not be liable for the default of the bidder.

DECISION

Clemco Industries protests the rejection of its low bid under invitation for bids (IFB) No. N62470-87-B-5022 for a project at the Naval Ordnance Station, Louisville, Kentucky. The Navy determined that Clemco's bid was nonresponsive because the bid bond submitted with its bid lists as the principal a different legal entity than the bidder.

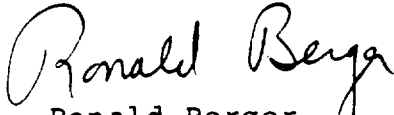
Clemco's bid was submitted with a bid bond naming Zero Manufacturing Company as the principal. Zero Manufacturing Company is a wholly owned subsidiary of Clemco. Clemco submitted the bid with a letter explaining that the bond was mistakenly issued to Zero by the surety. Clemco suggests that such an error can be waived because it is a minor informality within the purview of the Federal Acquisition Regulation, 48 C.F.R. § 14.405 (1986).

Bid bond requirements are a material part of the IFB that a contracting officer cannot waive. Thus, a bond which names a principal different from the bidder is deficient and the defect may not be waived as a minor informality. H&N Electric, Inc., and Buck's Electric, Inc., B-224024, Dec. 29, 1986, 86-2 CPD ¶ 718. A suretyship can only be created by an express agreement, and thus a surety under a bond in the name of Zero Manufacturing Company is not liable for the default of Clemco, the bidder. For this reason, the

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principal listed on the bond must be the same as the bidder. Opine Construction, B-218627, June 6, 1985, 85-1 CPD ¶ 645. Because the bidder and the principal listed on the bond were distinct legal entities, the bid was nonresponsive and Clemco's offer to correct the error cannot be considered, since a nonresponsive bid cannot be made responsive by actions taken after bid opening. Imperial Maintenance, Inc., B-224257, Jan. 8, 1987, 87-1 CPD ¶ 34.

The protest is dismissed.


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